Supreme Court, U.S.
FILED
MAR 28 1986
CLERK

No. 85-660 (12)

In the Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF COLORADO, PETITIONER

v.

FRANCIS BARRY CONNELLY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether the Due Process Clause requires the suppression of respondent's inculpatory statements even though the statements were volunteered to the police by respondent and were not in any way the product of coercive police conduct.

2. Whether respondent's mental condition rendered his waiver of *Miranda* rights ineffective.

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INTEREST OF THE UNITED STATES

The questions in this case are whether respondent's inculpatory statements are admissible under the Due Process Clause and whether respondent effectively waived his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The basic issue underlying both questions is whether respondent's delusion that he was compelled to confess bars the use of his statements as evidence, even though the police officers did not in any way induce respondent to provide this inculpatory information or to waive his *Miranda* rights. This Court's analysis and resolution of these questions is likely to have an effect upon the conduct of federal law enforcement agents in receiving voluntary inculpatory statements and the admission of such statements in federal criminal prosecutions.

STATEMENT

1. On August 18, 1983, Officer Patrick Anderson of the Denver Police Department was walking in uniform

on a street in downtown Denver, Colorado. Respondent approached Officer Anderson and "stated * * * that he had killed someone and wanted to [talk to Officer Anderson] about it." Tr. 7; Pet. App. A4. Officer Anderson advised respondent of his rights under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and respondent indicated that he understood his rights. Officer Anderson searched respondent for weapons, placed him in handcuffs, and took respondent into a store. Respondent then told Officer Anderson "that he had killed a girl he had been traveling with near the area of West Mississippi Avenue." Pet. App. A4-A5; Tr. 10-12.

Officer Anderson testified that he first thought respondent "was some sort of a crackpot" because individuals who volunteer information regarding criminal activity "sometimes [are] under the influence of drugs or alcohol or some type of thing like that" (Tr. 8, 9). However, respondent did not exhibit any indicia of drug or alcohol use and Officer Anderson stated that respondent's neat "manner of dress and his demeanor didn't coincide with my feelings that he might be mentally unstable * * * or under the influence of alcohol or drugs" (*id.* at 10).

Officer Anderson asked respondent for a piece of identification that would verify respondent's name and address. Respondent indicated that he had a driver's license, and Officer Anderson took the license, telephoned the National Crime Information Center, and ascertained that no warrants for respondent's arrest were outstanding. Officer Anderson also telephoned the Crimes Against Persons Division of the Denver Police Department to determine whether an unsolved crime matched the murder described by respondent. Detective Stephen Antuna of the Crimes Against Persons Division advised Officer Anderson to detain respondent until Detective Antuna could get to the scene. Tr. 11-13.

While awaiting Detective Antuna's arrival, Officer Anderson again advised respondent that he had a right to remain silent. Respondent stated that "it was all

right, that he would talk to [Officer Anderson] because his conscience had been bothering him, and he felt he had to come back to Denver." Tr. 16. Officer Anderson asked whether respondent had been using drugs or alcohol and whether he had been treated for any mental disorder. Respondent replied that he had not used drugs or alcohol but that he had been confined in several mental hospitals. Tr. 14.

Detective Antuna arrived and took custody of respondent, removed the handcuffs from respondent, and placed respondent in his police car. He advised respondent of his *Miranda* rights and asked respondent "to tell me what he had on his mind." Tr. 24. Respondent replied that "he wanted to confess to a murder of a young Indian female" and gave Detective Antuna the name of the murder victim. Pet. App. A4-A5; Tr. 24-25. Detective Antuna then transported respondent to the police station.

The officers began examining police department records in an effort to identify the crime described by respondent; they ascertained that the body of an unidentified female had been discovered in April 1983 (Tr. 25, 84). Detective Antuna subsequently asked respondent to repeat his statement for another police officer. Respondent did so, and "openly came out and told us that he would be glad to show us where it happened" (Tr. 27). Respondent and the police officers entered a police car and respondent guided the officers to a building in the industrial area of Denver; he appeared "frightened [and] * * * upset," and stated that he "had stabbed the Indian female, and that he had left her there, and * * * covered her up with a mattress." Tr. 31; see also Pet. App. A5-A6; Tr. 25-32. Respondent subsequently told the officers that he had met the murder victim in Boston and that "he had only known her a few days before they decided to go traveling around the United States" (Tr. 32-33). He indicated that the murder had been committed in November or December 1982 (*ibid.*).

2. Respondent was charged with second degree murder. He initially was declared incompetent to stand trial, but after six months of treatment he was found competent to be tried. Defendant moved to suppress his inculpatory statements on the ground that he was mentally incompetent at the time he confessed. He contended that his confession was involuntary and that his mental condition precluded an effective waiver of his *Miranda* rights. Pet. App. A2-A3.

A court-appointed psychiatrist testified at the suppression hearing that respondent had told him that on the afternoon of August 17, 1983—the day before he made his inculpatory statements—respondent "began experiencing God's voice telling him to go to Denver and confess the alleged crime to a policeman" (Tr. 52). Respondent told the psychiatrist that he acted on those thoughts by withdrawing money from his bank account and taking a plane from Boston to Denver. Respondent stated that he was ambivalent about confessing but that the voice, which respondent described as "God's voice," then told respondent that "[h]e could either confess or he could kill himself" (Tr. 53). Respondent told the psychiatrist that "he felt that he didn't have much of a choice. The voice told him to go get a razor blade to kill himself. He made it quite clear he did not want to kill himself, and the other option he saw was to confess" (*ibid.*).

The psychiatrist concluded that respondent suffered from chronic schizophrenia and had experienced "command hallucinations" at the time he made the inculpatory statements. The psychiatrist stated that when a person experiences a command hallucination, he "feels as if [he has] to act on whatever the voice is telling [him]. * * * [A] command hallucination * * * really affects his volitional abilities; that is, his ability to make free and rational choices." Tr. 56. Thus, in the psychiatrist's opinion, respondent's illness "did not significantly impair his cognitive abilities, * * * for example * * * when he was read his *Miranda* rights, he probably had the capac-

ity to know that he was being read his *Miranda* rights, and he had certain rights, but * * * I think he wasn't able to use that information because of the command hallucinations that he had experienced" (Tr. 56-57).

The trial court granted the motion to suppress (Tr. 83-90). The court specifically found that "Officer Anderson used no threats, force, coercion or tricks to get the information that was given to him by [respondent]" and that Detective Antuna did not employ "promises or inducements [or] * * * threats" in his conversations with respondent (Tr. 83-84). It concluded that "legally * * * there was nothing untoward in what the police did in receiving and recording [respondent's] comments to them" (*id.* at 86).

The court nonetheless held that respondent's statements should be suppressed under the Due Process Clause. It concluded that this Court's decisions did not require that "there has to be something done by the police in order to make [a] confession [subject to suppression as] involuntary" (Tr. 88). It found that respondent's statements were inadmissible because respondent "did not exercise free will in choosing to talk to the police. He exercised a choice * * * mandated by auditory hallucination, [that] had no basis in reality, and [was] the product of a psychotic break with reality. [Respondent] at the time of the confession had absolutely in the Court's estimation no volition or choice to make. He was compelled by his illness to do that which he did" (Tr. 88-89).

The court also held that respondent did not effectively waive his *Miranda* rights. It concluded that respondent's waiver was invalid because it was a "product of his psychosis" in that respondent "would sign anything, he would do anything to follow the mandate of God to confess because his only alternative was to kill himself, and he did not choose to do that" (Tr. 89).

3. The Supreme Court of Colorado affirmed by a divided vote. The majority stated that "[t]he ultimate test of [the] voluntariness [of a confession] is whether the statement was the product of a rational intellect and

a free will. If the statement was a product of an essentially rational and free choice by its maker, then it may be used against him at trial; if it was not, the admission of the statement at trial offends due process of law" (Pet. App. A17-A18 (citations omitted)). The court observed that "the absence of police coercion or duress does not foreclose a finding of involuntariness. One's capacity for rational judgment and free choice may be overborne as much by certain forms of severe mental illness as by external pressure" (*id.* at A19).

With respect to the present case, the court observed that the medical testimony "established that [respondent] on this occasion was suffering from a serious mental disorder which placed him in the dilemma of confessing his crime to the police or committing suicide" (Pet. App. A21). On the basis of this evidence, the supreme court approved the trial court's determination that respondent's initial statement to the police officer "was not the product of a rational intellect and a free will notwithstanding the fact that this statement was neither solicited by the officer nor was the result of any form of police action" (*id.* at A21-A22).

The Colorado Supreme Court also upheld the suppression of respondent's subsequent inculpatory statements on the ground that respondent did not validly waive his *Miranda* rights. It found that the medical testimony "clearly established that [respondent's] mental condition on August 18, 1983, was such that he was incapable of making an intelligent and free decision" to relinquish his rights (Pet. App. A23).

Two justices dissented in part. They found that "a statement can be suppressed as involuntary only if it has been extracted by police questioning or obtained through improper external force. * * * Statements which a defendant volunteers independent of police questioning or external force should not be subject to suppression under the fifth amendment." Pet. App. A3 (Erickson, J., concurring in part and dissenting in part) (citation omitted). The dissenting justices observed that respondent's

statements were "not tied to police questioning or external pressures of any kind" and that "[t]he 'internal voices' that compelled his confession were part and parcel of his own psychological makeup" (*id.* at A3-A5). Thus, "[w]hile [respondent's] mental condition may be introduced at trial to attack the credibility of his confession or to establish nonresponsibility for the crime committed, [respondent's] mental illness should not preclude a finding that his statement was voluntary for purposes of the fifth amendment" (*id.* at A5). The dissenting justices concluded that the contrary rule adopted by the majority "essentially requires police officers to close their eyes and ears when openly approached with evidence that a crime has been committed" (*id.* at A5-A6).

SUMMARY OF ARGUMENT

A. This Court long has held that the Due Process Clause bars the admission of a confession into evidence only when the confession is the product of government coercion; "the Court's analysis has consistently been animated by the view that * * * *tactics for eliciting inculpatory statements* must fall within the broad constitutional boundaries imposed by the * * * guarantee of fundamental fairness." *Miller* v. *Fenton*, No. 84-5786 (Dec. 3, 1985), slip op. 5 (emphasis added). The conduct of the police officers in this case plainly did not run afoul of this prohibition. Since respondent volunteered his statements to the police officers, the statements cannot even be considered to be the result of police questioning, let alone the product of fundamentally unfair interrogation techniques.

This Court should reject the novel conclusion of the Colorado Supreme Court that the Due Process Clause contains an additional rule barring the admission into evidence of a defendant's inculpatory statement whenever the statement is not the product of the defendant's "free will." Society should not be required to close its

eyes to highly probative evidence volunteered to the police simply because the decision to provide the evidence is found to result from a clouded exercise of judgment by the defendant. Indeed, the sole effect of such a rule would be to protect a defendant's "right" to withhold evidence in order to escape detection—the only interest that conceivably could be served by suppressing information volunteered to the police. Accordingly, the use of such evidence at trial plainly does not "shock the conscience" in the manner required to establish a violation of the Due Process Clause.

Moreover, any such free will standard would be extremely difficult to apply. Defendants undoubtedly would seek to suppress their confessions on the grounds that they suffered from a mental disability at the time they confessed, or were under the influence of drugs or alcohol, or because overwhelming remorse clouded their exercise of free will. And nothing in the Colorado Supreme Court's opinion indicates that this new constitutional requirement would apply only to an individual's statements to the police. Since its rationale is entirely detached from government misconduct, suppression would be required of, for instance, an inculpatory letter sent to the police or even the defendant's oral statements to private individuals, if they were not products of the defendant's free will. Nothing in the Constitution warrants such an arbitrary and irrational elimination of highly probative evidence from the truth seeking process.

B. This Court's decision in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), similarly provides no basis for suppressing respondent's statements. As a threshold matter, *Miranda*'s procedural protections do not appear to be implicated here because respondent was not subjected to "custodial interrogation." Respondent initiated discussions with the authorities by approaching Officer Anderson and announcing his decision to confess. The record indicates that the officers' "questions" basically consisted of nothing more than demonstrations of will-

ingness to listen to what respondent had to say and requests that respondent repeat his initial statement. Since the impetus for communication plainly derived from respondent, the officers' generalized questions could not have imposed the additional pressure to speak that must be present before the *Miranda* protections apply.

In any event, the police officers did administer the *Miranda* warnings to respondent, respondent stated that he understood the warnings, and respondent decided to respond to the officers' requests that he repeat his initial statement. These facts demonstrate that respondent effectively waived his *Miranda* rights. This Court recently stated that the inquiry into the validity of a *Miranda* waiver involves two separate issues; the circumstances must reveal "both an uncoerced choice [by the defendant to waive his *Miranda* rights] and the requisite level of comprehension [of those rights]." *Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), slip op. 7. The only possible question regarding the validity of the waiver here is whether respondent's decision was invalid as coerced because it was a product of his mental delusion. But the privilege against compelled self-incrimination, like the Due Process Clause, protects a citizen against only *government* coercion. Since respondent's waiver was not the product of pressure by the police officers—but stemmed from his internal compulsion to confess—respondent's waiver of his rights should be found effective. Interpreting *Miranda* to render respondent's waiver ineffective and require the suppression of his inculpatory statements in these circumstances—where the absence of government coercion guarantees that the statement could not have been obtained in violation of the privilege against compelled self-incrimination—"would ignore both *Miranda*'s mission and its only source of legitimacy." *Moran* v. *Burbine*, slip op. 11.

ARGUMENT

RESPONDENT'S UNCOERCED STATEMENTS SHOULD NOT BE SUPPRESSED

Respondent approached a police officer on a street in Denver, Colorado, and confessed that he had committed a murder. After being taken into custody, respondent willingly disclosed additional information about the crime, including the name of the victim and the location where she was slain. The courts below specifically found that these inculpatory statements did not in any way result from police coercion or trickery; indeed, the officers punctilious concern for respondent's rights is demonstrated by the fact that they several times advised respondent in accordance with the dictates of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), and respondent indicated that he understood those rights. Against this background, it confounds common sense and distorts the important values embodied in the Constitution to hold that admission of respondent's inculpatory statements into evidence is prohibited. The limitations upon police interrogation established by this Court's decisions interpreting the Due Process Clause and the privilege against compelled self-incrimination rest upon the basic determination that society will not tolerate the conviction of a defendant on the basis of statements elicited through coercive conduct by government officials. Since, as the trial court concluded, "legally * * * there was nothing untoward in what the police did in receiving and recording [respondent's] comments to them" (Tr. 86), these constitutional limitations plainly are not implicated here.

The question in this case is whether the Court should adopt a new constitutional rule designed not to insulate citizens from government pressure, but to protect them from any self-generated compulsion to reveal information to the authorities.[1] Thus, the Colorado Supreme

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[1] In fact, there is no logical basis for limiting the Colorado Supreme Court's new exclusionary rule to statements made to police or other public officials, since the rule does not in any way

Court upheld the suppression of respondent's inculpatory statements on the ground that respondent's mental condition limited his ability to exercise his "free will" in deciding whether to confess. We submit that nothing in the Constitution renders the admissibility of a defendant's confession dependent upon the defendant's subjective reasons for deciding to confess. So long as coercive government pressure did not cause the confession, the defendant's reasons for confessing are constitutionally irrelevant. Moreover, a rule requiring trial courts to evaluate the motive of every defendant who chooses to confess would be quite difficult to apply in practice, and undoubtedly would exact a severe toll upon law enforcement efforts by requiring the withdrawal of highly probative evidence from the truth-seeking process.[2]

A. The Due Process Clause Prohibits The Admission Into Evidence Of A Defendant's Statement Only If The Statement Is A Product Of Government Coercion

The purpose of the Due Process Clause is " 'to secure the individual from the arbitrary exercise of the powers

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depend on a causal link between the statements and any governmental action. A drunk's confession in a barroom to a bank robbery or the statements of a rapist who called his victim after the crime, if not the product of free will, also would presumably have to be suppressed.

[2] This case concerns only the constitutional limitations upon the admissibility of a defendant's statement. Rules of evidence also may affect the admissibility of statements or other testimony of mentally incapacitated persons, although modern rules generally permit the introduction of such evidence, leaving its weight to be evaluated by the jury. Thus, Rule 601 of the Federal Rules of Evidence provides that "[e]very person is competent to be a witness except as otherwise provided in these rules." The advisory committee note states that "[n]o mental or moral qualifications for testifying as a witness are specified. * * * Discretion is regularly exercised in favor of allowing the testimony. * * * The question is one particularly suited to the jury as one of weight and credibility, subject to judicial authority to review the sufficiency of the evidence." See 3 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 601[01], at 601-09 to 601-10 (1985); *id.* ¶ 601[03], at 601-25 to 601-28.

of government.'" *Hurtado* v. *California*, 110 U.S. 516, 527 (1884) (citation omitted); see also *Wolff* v. *McDonnell*, 418 U.S. 539, 558 (1974). As this Court recently observed with reference to the substantive content of due process, "by barring certain government actions regardless of the fairness of the procedures used to implement them, [the Due Process Clause] serves to prevent governmental power from being 'used for purposes of oppression.'" *Daniels* v. *Williams*, No. 84-5872 (Jan. 21, 1986), slip op. 5, quoting *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 277 (1855); see also *Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), slip op. 18 (citation omitted) (the "fundamental fairness" guaranteed by due process requires condemnation of police conduct that is "violative of canons fundamental to the '"traditions and conscience of our people"'"); *Chambers* v. *Florida*, 309 U.S. 227, 236-241 (1940); *Dent* v. *West Virginia*, 129 U.S. 114, 123 (1889). Respondent's inculpatory statements indisputably were not the result of the coercive application of government authority, and the use of his statements at trial would not otherwise violate fundamental fairness. The Due Process Clause therefore does not prohibit the admission of the statements into evidence.

1. Since its decision 50 years ago in *Brown* v. *Mississippi*, 297 U.S. 278 (1936), this Court has found within the Due Process Clause of the Fourteenth Amendment the basic principle that "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned" as violations of due process. *Miller* v. *Fenton*, No. 84-5786 (Dec. 3, 1985), slip op. 5. The Court observed in *Brown* that "[t]he due process clause requires 'that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'" (297 U.S. at 286 (citation omitted)). It held that the admission into evidence of the confessions in that

case violated due process because "[i]t would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions" (*ibid.*).

A focus upon whether government agents used unfair interrogation methods has been the hallmark of this Court's due process decisions in the confession context. In *Rogers* v. *Richmond*, 365 U.S. 534 (1961), for example, the Court stated that convictions may not be based upon confessions that are "involuntary, *i.e.*, the product of coercion, either physical or psychological," because "the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system." *Id.* at 540-541; see also *Haynes* v. *Washington*, 373 U.S. 503, 513-515, 519 (1963); *Spano* v. *New York*, 360 U.S. 315, 320-321 (1959).[3] Indeed, the Court observed in *Malloy* v. *Hogan*, 378 U.S. 1 (1964), that "the admissibility of a confession in a state criminal prosecution" is determined by reference to the Fifth Amendment standard applicable in federal prosecutions—whether "the person * * * [was] compelled to incriminate himself" (*id.* at 7).

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[3] See also *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973) (the due process standard reflects an accommodation between the need for effective law enforcement and "society's deeply felt belief that the criminal law cannot be used as an instrument of unfairness, and that the possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice"); *Lego* v. *Twomey*, 404 U.S. 477, 485 (1972) ("[t]he use of coerced confessions * * * is forbidden because the method used to extract them offends constitutional principles"); *Miranda* v. *Arizona*, 384 U.S. at 464-465 (footnote omitted) (the due process standard "encompasses all interrogation practices which are likely to exert such pressure upon an individual as to disable him from making a free and rational choice"); *Shotwell Manufacturing Co.* v. *United States*, 371 U.S. 341, 348 (1963) ("[a] coerced confession claim * * * always involves this question: did the governmental conduct complained of 'bring about' a confession 'not freely self-determined' "); *Reck* v. *Pate*, 367 U.S. 433, 442 (1961) ("overbearing police tactics"); *Ashcraft* v. *Tennessee*, 322 U.S. 143, 154-155 (1944) (indicating that "unrestrained [government] power" is the evil apprehended by the prohibition upon coerced confessions).

The Fifth Amendment privilege is violated only when a citizen is compelled to speak as a result of government coercion. *United States* v. *Washington*, 431 U.S. 181, 187 (1977); see page 27, *infra*. The role of the due process protection therefore also must be to guard the public against the coercive use of government power to secure an admission of guilt.

The Court confirmed this conclusion earlier this Term, observing that "the admissibility of a confession [under the Due Process Clause] turns as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant's will was in fact overborne." *Miller* v. *Fenton*, slip op. 12 (emphasis in original). Thus, "[a]lthough [the Court's] decisions framed the legal inquiry in a variety of different ways, usually through the 'convenient shorthand' of asking whether the confession was 'involuntary,' the Court's analysis has consistently been animated by the view that * * * *tactics for eliciting inculpatory statements* must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness." *Id.* at 5 (citation omitted; emphasis added); see also *Moran* v. *Burbine*, No. 84-1485 (Mar. 10, 1986), slip op. 33 & n.62 (Stevens, J., dissenting).

The Colorado Supreme Court seized upon this Court's use of the term "involuntary" in describing the test for the admissibility of a confession under the Due Process Clause, and mistakenly concluded that a confession that is not the product of "rational judgment and free choice" must be suppressed even in the "absence of police coercion or duress" (Pet. App. A19). It believed that this conclusion derived from *Blackburn* v. *Alabama*, 361 U.S. 199 (1960), and *Townsend* v. *Sain*, 372 U.S. 293 (1963), but in each of those cases the presence of police questioning as the factor inducing the defendant's confession was an essential element in this Court's determination that

the confession was inadmissible under the Due Process Clause.

In *Blackburn*, the defendant introduced evidence that he was mentally ill at the time he confessed, but this Court's decision that the confession should have been suppressed did not rest solely upon that fact. The Court observed that the defendant was subjected to an "eight- to nine-hour sustained interrogation in a tiny room which was upon occasion literally filled with police officers," that neither the defendant's family nor his legal counsel was present, and that the confession was written by the police rather than by the defendant (361 U.S. at 207-208). Thus, the Court's decision that the confession was obtained in violation of due process cannot be divorced from the fact that it was produced by coercive government questioning.

Similarly, in *Townsend* v. *Sain*, *supra*, the Court applied the rule that "[a]ny questioning by police officers which *in fact* produces a confession which is not the product of a free intellect renders that confession inadmissible." 372 U.S. at 308 (emphasis in original; footnote omitted). The defendant in that case—who was a heroin addict—was interrogated while under the influence of drugs administered by the police to alleviate the defendant's withdrawal symptoms, but which also had the effect of reducing the recipient's will to resist interrogation; the Court held that the confession resulting from the police questioning was inadmissible under the Due Process Clause. The Court subsequently characterized *Townsend* as a case in which the defendant was found to have succumbed "[i]n [an] incommunicado police-dominated atmosphere" (*Miranda* v. *Arizona*, 384 U.S. at 456).

Thus *Blackburn* and *Townsend* simply are examples of the basic principle that the potential coercive effect of police conduct must be determined by reference to the circumstances of each particular case, including the condition of the defendant. If the defendant's condition renders him more susceptible to coercion, a lesser degree of

pressure by the police will be deemed an impermissible technique for extracting a confession, and any inculpatory statement resulting from the use of such a technique will be inadmissible under the Due Process Clause. See *Mincey* v. *Arizona*, 437 U.S. 385, 399 (1978) (defendant lying in a hospital bed in a weakened condition was "unable to escape or resist the thrust of [the police officer's] interrogation"; confession held inadmissible under Due Process Clause).[4]

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[4] The most difficult question would arise when the suspect has a weakness or susceptibility not known to the police but in fact making him especially vulnerable to some otherwise permissible form of interrogation. While *Townsend* suggests that a police motive to exploit a suspect's weakness is not necessary for a due process violation, that was a case in which the authorities should have known of the likely effect of administration of the "truth serum." The question whether a due process violation can be established only when the police knew or should have known that their interrogation tactics were improper is not presented here because, as we discuss below, respondent's statements did not result from police questioning of any type. However, the issue does arise from time to time.

For example, in *United States* v. *Murphy*, 763 F.2d 202 (6th Cir. 1985), cert. denied, No. 85-5350 (Jan. 13, 1986), a police officer used a dog to assist in searching a wooded area for two bank robbers. The dog apprehended one of the defendants by biting him and dragging him out from beneath a tree; the defendant spontaneously and unexpectedly confessed to the bank robbery in the course of asking the police officer to call off the dog. 763 F.2d at 204. The court of appeals found that the police officer acted properly in using the dog to apprehend the defendant and that the officer did not " 'intend' to elicit [the defendant's] statements" (*id.* at 205). The court of appeals nonetheless concluded that the admission in evidence of the defendant's inculpatory statements violated the Due Process Clause on the ground that the statements were the product of the coercive effect upon the defendant of the use of the police dog. (The conviction was nevertheless affirmed on the ground that the admission of the statements was harmless error.)

As we noted in our brief in opposition in *Murphy* (at 5-7), we believe that the court of appeals erred in finding a due process violation on the facts of that case. (We have served counsel with our brief in opposition in *Murphy*.) Since the police officer's con-

Here, of course, there was *no* police conduct that could in any way be characterized as coercive or improper. Nor was respondent's willingness to speak in any way caused by police conduct, proper or improper. Respondent's initial statement admitting his complicity in the murder was volunteered to a police officer on the street; his subsequent statements were simply responses to requests that he repeat his story. Indeed, the trial court specifically found that respondent's statements were not the result of coercion, promises or inducements by the police officers. Tr. 84; see also Pet. App. A22. Since the police did not use any improper interrogation techniques to obtain respondent's statements, the use of those statements at trial cannot offend the Due Process Clause.

2. There is no warrant for this Court to adopt a second due process standard governing the admissibility of confessions that would require the suppression of an inculpatory statement solely on the ground that—due to the defendant's mental condition, drug or alcohol use, or other inner compulsion—the statement was not the product of the defendant's "free will." The Court recently affirmed that in order to constitute a due process violation the challenged government conduct must "so shock[] the sensibilities of civilized society as to warrant a federal intrusion into the criminal processes of the States." *Moran* v. *Burbine*, slip op. 19; see also *Rochin* v. *California*, 342 U.S. 165, 169 (1952). The admission into

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duct was entirely proper, and the officer could not have anticipated that the use of the dog would prompt the defendant to confess, the officer's use of the dog cannot properly be classified as an "interrogation technique" that violated fundamental fairness. See *Miller* v. *Fenton*, slip op. 5. The ultimate question under the Due Process Clause is whether a citizen has been the victim of an abuse of government power, and it therefore is appropriate to evaluate the fairness of interrogation techniques in light of the facts known to the officers at the time the confession is obtained. A police officer whose actions are appropriate in light of the facts of which he is aware or should have been aware cannot be deemed to have abused his governmental authority in the manner prohibited by the Due Process Clause.

evidence of a defendant's uncoerced inculpatory statement does not come close to meeting this standard.

As a general matter, of course, there is nothing shocking or even improper about the use in evidence of a defendant's uncoerced inculpatory statements; "admissions of guilt by wrongdoers, if not coerced, are inherently desirable." *United States* v. *Washington*, 431 U.S. at 187; see also *Haynes* v. *Washington*, 373 U.S. at 515; *Culombe* v. *Connecticut*, 367 U.S. 568, 571 (1961) (opinion of Frankfurter, J.). The goal of law enforcement is to catch persons who commit criminal acts, and admissions of guilt are "essential to society's compelling interest in finding, convicting and punishing those who violate the law" (*Moran* v. *Burbine*, slip op. 12).

Society should not be required to forgo the use at trial of this highly probative evidence simply because a defendant's decision to confess is attributable to a self-generated compulsion rather than the defendant's "free will." The only possible "unfairness" that could result from the admission of such a confession into evidence is that the defendant may thereby—without voluntarily choosing to do so—lose his best chance to avoid detection or conviction for his crime. But that sort of "unfairness" does not infringe upon an interest worthy of protection under the Constitution. Law enforcement is not a sporting contest in which a criminal must be accorded a fair chance to outwit the police so that he may remain at large. When the government did not bring about the disability that caused the defendant's confession, there is no justification for requiring the police to ignore highly probative evidence of criminal activity that is *volunteered* by the defendant. After all, the defendant will not be punished for his decision to confess, but only for any crime he is found to have committed.

Upon close analysis, it is impossible to distinguish the application of this "free will" rationale in the instant case from other situations in which a finding of a due process violation would appear bizarre indeed. For example, a criminal could suffer from an irresistible com-

pulsion to write letters to the police providing clues regarding his crimes. Such letters undoubtedly would constitute valuable evidence both because of the information they contained and because handwriting analysis and other investigatory techniques might be used to identify the perpetrator. But under a "free will" due process standard the letters would be subject to suppression because they stemmed from the defendant's compulsion and were not a product of his free will. Similarly, suppose a robber, being chased by the police, stumbles while leaving the scene of a robbery and accidentally drops a gun bearing his fingerprints. The availability of that evidence for use in court would not be a product of the defendant's "free will," yet no one could seriously contend that its introduction at trial would offend due process requirements. Or suppose the robber gets drunk at a tavern and tells the bartender about the robbery. Intoxication may have deprived him of the ability to monitor and control his statements, but surely the bartender could nevertheless testify to what he had heard.

Even if the use by the government of a defendant's confession could be viewed as in some sense unfair on the ground that the confession did not result from the defendant's exercise of his free will, it could not rise to the level of fundamental unfairness violative of due process. The Due Process Clause generally has been applied to prevent wrongful and oppressive conduct initiated by the government that unfairly victimizes other participants in the criminal justice system. See, *e.g.*, *North Carolina* v. *Pearce*, 395 U.S. 711 (1969) (vindictive sentencing); *Brady* v. *Maryland*, 373 U.S. 83 (1963) (withholding evidence requested by defendant); *Rochin* v. *California*, *supra* (oppressive investigative techniques). The use in evidence of a confession that is not the product of a defendant's free will differs from the conduct condemned in these cases because it does not involve the exercise of oppressive government power. Indeed, a rule requiring the suppression of a confession in the circumstances presented here would not be designed to avoid

government oppression; its goal would be to protect a defendant against the consequences of his own independent decision to confess. The decision not to afford defendants this sort of self-protection measure does not "shock[] the sensibilities of civilized society" (*Moran*, slip op. 19) in the manner required to justify the suppression of a confession under the Due Process Clause.[5]

Moreover, a rule under which the admissibility of a confession depended upon the extent to which the defendant exercised his free will could have extremely broad ramifications. The benefit of such a rule would not necessarily be limited to persons who were legally insane at the time they confessed. Here, for example, the trial court suppressed respondent's statements even though it expressly declined to find that respondent was insane at the time the statements were made (Tr. 87). Volunteered statements of persons under the influence of alcohol or drugs also might be deemed inadmissible under such a rule. Similarly, a defendant whose religious beliefs led him to believe that he would endure eternal suffering unless he confessed or a defendant who confessed because he was overcome by sudden remorse for his criminal act would argue that they were entitled to the suppression of their confessions on the ground that their decisions to confess were not "rational." Thus, dividing confessions into those statements that may be considered

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[5] Furthermore, unlike improper police questioning, which can be identified by police officers and therefore may be deterred by a rule requiring the suppression of coerced confessions, a suspect's mental disability might not be apparent to police officers at the time the inculpatory statement is volunteered. In this case, for example, Officer Anderson was not likely to have known that respondent was suffering from "command auditory hallucinations" at the time he made his inculpatory statement. Thus, the police investigation probably would proceed on the assumption that the suspect's statement was admissible, and the police would attempt to develop additional information on the basis of the statement. If the statement later was suppressed because it was not the product of the suspect's "free will," the entire police investigation could be compromised.

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products of a "free will" and those that cannot would pose an extremely difficult problem. The philosophical debate over the nature of free will might well become a staple of the suppression hearing.

Finally, because the nature of any such internal disability would be peculiarly within the knowledge of the defendant, it might be extremely difficult to adjudicate claims that confessions should be suppressed on this basis. What can be stated with certainty is that such a new due process right would proliferate litigation in connection with the admissibility of defendants' inculpatory statements.

B. *Miranda* Does Not Require The Suppression Of Respondent's Statements

The rules established by this Court in *Miranda* v. *Arizona*, *supra*, are designed to ensure that government compulsion does not influence a suspect's decision whether to answer the questions posed by police officers during interrogation. The *Miranda* Court determined that a suspect's privilege against compelled self-incrimination was threatened by the "inherently compelling pressures [of in-custody interrogation] which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (384 U.S. at 467). It held that in order "to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored" (*ibid.*). *Miranda* prescribed "procedural safeguards" designed to accomplish this end. *Id.* at 444-445; see also *Moran* v. *Burbine*, slip op. 6. If the officers fail to apprise the suspect of his rights, or fail to obtain from the suspect a valid waiver of those rights, the suspect's statements in response to police interrogation cannot be admitted into evidence (*ibid.*).

Of course, the presumption of compulsion that is the justification for *Miranda*'s procedural safeguards plainly

is inapplicable in this case. The very mental disorder cited by the courts below as the basis for invalidating respondent's *Miranda* waiver—respondent's irresistible impulse to confess—guaranteed that respondent's decision to confess could not possibly be affected by any compulsion inherent in custodial interrogation or by the application of *Miranda's* procedural safeguards. There is thus no justification for applying *Miranda* on the facts presented here; the suppression of respondent's statements would be completely inappropriate because respondent's decision to confess could not have been affected by the factors that underlie the *Miranda* exclusionary rule. Cf. *New York* v. *Quarles*, No. 82-1213 (June 12, 1984) (declining to apply *Miranda* exclusionary rule where other considerations weighed against a strict application of *Miranda*).

Moreover, respondent was advised of his *Miranda* rights, stated that he understood those rights, and decided to confess. Since respondent's decision to waive his *Miranda* rights could not possibly have been the result of government coercion, respondent's *Miranda* waiver was valid and his inculpatory statements accordingly should not have been suppressed.[6]

1. As a threshold matter, it is not clear that *Miranda* has any application in this case because respondent's inculpatory statements do not appear to have resulted from "interrogation" as that term has been defined in the *Miranda* context.[7] The Court in *Miranda* made clear that

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[6] Regardless of the validity of respondent's waiver, respondent's first statement to Officer Anderson (see page 2, *supra*) obviously was not the product of custodial interrogation and therefore could not properly be (and was not in this case) suppressed under *Miranda*.

[7] It appears from the record that the second prerequisite for the attachment of a suspect's *Miranda* rights—that the suspect has been "taken into custody or otherwise deprived of his freedom of action in any significant way" (*Miranda*, 384 U.S. at 444 (footnote omitted))—is present here. Respondent was placed in handcuffs immediately after he made his initial statement to Officer Anderson

the "procedural safeguards" prescribed in that decision apply only to "custodial interrogation"; the Court defined custodial interrogation as "*questioning initiated by law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (384 U.S. at 444 (footnote omitted; emphasis added)). The Court also affirmed in that case that "[c]onfessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. * * * There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." *Id.* at 478 (footnote omitted); see also *Rhode Island* v. *Innis*, 446 U.S. 291, 298, 299-300 (1980).

Miranda thus recognizes that inculpatory statements may result from two essentially different processes, one in which the impetus for the statements comes from the suspect, the other in which it comes from the authorities. The different levels of compulsion likely to be associated with these different circumstances are important in determining whether the authorities have engaged in "interrogation" triggering the application of *Miranda*'s procedural safeguards.

A finding that a police officer has engaged in "interrogation" is appropriate when the police officer's conduct "reflect[s] a measure of compulsion above and beyond that inherent in custody itself" (*Rhode Island* v. *Innis*, 446 U.S. at 300 (footnote omitted)). The application of this standard is relatively straightforward when the suspect has not chosen to volunteer a confession. In that circumstance, ar questioning by the police most likely

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(Tr. 11) and remained under the control of the police officers during the period that he made his subsequent inculpatory statements (see Tr. 24-30).

would impose additional pressure to speak upon the suspect, and therefore would amount to interrogation. The Court in *Rhode Island* v. *Innis*, *supra*, thus concluded with respect to this situation that "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police * * * that the police should know are reasonably likely to elicit an incriminating response from the suspect" (446 U.S. at 301 (footnote omitted)).

The type of police conduct that reflects compulsion—and therefore the definition of "interrogation"—necessarily differs when a suspect has volunteered a confession or otherwise spontaneously initiated discussion of the offense. At first blush, police "questioning" in connection with receipt of such disclosures might appear to be unnecessary, but, as the present case demonstrates, when a suspect volunteers a confession police officers seeking to record the confession almost certainly will be required to ask the suspect to "tell us what happened" or "what happened next," or to request that he repeat his statement for a second or third officer. Such generalized invitations to the suspect to tell his story do not transform the repetition of the suspect's voluntary confession into "questioning initiated by law enforcement officers" (384 U.S. at 444) that must be accompanied by *Miranda*'s procedural safeguards. In view of the suspect's prior decision to supply this information to the police, such general questions do not add any meaningful "measure of compulsion" (*Innis*, 446 U.S. at 300).[8]

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[8] The Court observed in *Edwards* v. *Arizona*, 451 U.S. 477 (1981), and held in *Oregon* v. *Bradshaw*, 462 U.S. 1039 (1983), that a suspect who had asserted his right to counsel could later lawfully be interrogated if he initiated a renewed discussion of the offense with police officers. The *Edwards* Court stated (451 U.S. at 486 n.9) that "[i]f, as frequently would occur in the course of a meeting initiated by the accused, the conversation is not wholly one-sided, it is likely that the officers will say or do something that clearly would be 'interrogation.'" This statement does not undercut our conclusion that there was no interrogation in the present case. First, the Court in *Edwards* was addressing a situation in which the accused first requested an attorney and only subsequently

In this case, respondent's initial statement to Officer Anderson falls squarely within the exception for voluntary statements identified by the *Miranda* Court itself. Respondent approached Officer Anderson to "offer a confession" and repeated his confession for other police officers. See pages 2-3, *supra*. Although respondent's subsequent statements were made in response to general "questions" by police officers, these general inquiries simply could not have had the coercive effect that *Miranda* is designed to counteract. For this reason, follow-up questioning such as the questioning of respondent in this case should not be deemed to constitute interrogation that must be accompanied by the procedural safeguards set forth in *Miranda*. See 1 W. LaFave & J. Israel, *Criminal Procedure* § 6.7(d) (1984).[9]

2. In any event, respondent effectively waived his *Miranda* rights before making his inculpatory statements to the police officers. *Miranda* itself recognized that a defendant may waive the rights described in the warnings and agree to respond to questions posed by the police "provided the waiver is made voluntarily, knowingly and intelligently" (384 U.S. at 444). This Court recently set forth a comprehensive description of the waiver inquiry:

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decided to permit interrogation; here, the police officers were following up upon a spontaneous statement that was not preceded by an assertion of rights. Second, *Edwards* does not set forth a test for determining whether police officers' generalized inquiries can amount to interrogation when the discussion is preceded by a voluntary statement. We submit that the standard described in the text properly reconciles the relevant interests.

[9] Of course, if such follow-up questioning ranges significantly beyond the bounds of the information volunteered by the defendant in his spontaneous statement, and the police begin to seek information that was not volunteered by the suspect, the police questioning would constitute interrogation regulated by *Miranda*. On the other hand, the fact that a suspect chooses to volunteer additional information in response to a general question of the type discussed above—as respondent chose to do here—would not transform the otherwise-permissible inquiry into interrogation; the suspect's decision to supply new information would not have been the result of any compulsion flowing from the character of the question posed by the police.

> First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Moran v. *Burbine*, slip op. 7 (citation omitted); see also *Fare* v. *Michael C.*, 442 U.S. 707, 725 (1979); *North Carolina* v. *Butler*, 441 U.S. 369, 373-374 (1979).[10]

Here, the record shows that the police officers several times administered the *Miranda* warnings, respondent stated that he understood his rights, and respondent did not assert his right to remain silent and did not request the presence of an attorney. See pages 2-3, *supra*. Thus, the police officers followed the procedures required to obtain a valid *Miranda* waiver. See *Moran* v. *Burbine*, slip op 6. Moreover, it seems clear that the second aspect of the waiver inquiry was satisfied in this case: respondent was aware of the nature of the right against compelled self-incrimination and the consequence of his decision to waive that right.[11] The sole issue here is whether respondent's waiver decision was voluntary in that it was the product of an "uncoerced choice" (*Moran*, slip op. 7).

As a threshold matter, it is clear that the content of the voluntariness standard applicable to respondent's waiver decision must be determined by reference to the interests protected by the privilege against compelled self-incrimination. See *Moran* v. *Burbine*, slip op. 10-11

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[10] The prosecution bears the burden of demonstrating the validity of the waiver. *Butler*, 441 U.S. at 373; *Miranda*, 384 U.S. at 475.

[11] Respondent told the officers that he understood his rights (Tr. 10-12, 16), and the court-appointed psychiatrist testified that respondent was capable of understanding his rights (Tr. 56-57). The courts below did not make any factual findings to the contrary.

(refusing to interpret *Miranda* to bar police deception of an attorney because such a rule would be unrelated to *Miranda*'s purpose of "guard[ing] against abridgement of the suspect's Fifth Amendment rights"); cf. *Miller* v. *Fenton*, *supra* (defining due process voluntariness standard by reference to the goal of preventing government coercion that is encompassed within the Due Process Clause).

The sole purpose of the privilege against compelled self-incrimination is to protect individuals against the use of government power to compel a confession. The Court has observed that "[a]bsent some *officially coerced* self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions." *United States* v. *Washington*, 431 U.S. at 187 (emphasis added); see also *New York* v. *Quarles*, slip op. 4; *Miranda*, 384 U.S. at 460 (historical development of the privilege reflected "grop[ing] for the proper scope of governmental power over the citizen"). The privilege thus "is [not] concerned with moral and psychological pressures to confess emanating from sources other than official coercion" (*Oregon* v. *Elstad*, No. 83-773 (Mar. 4, 1985), slip op. 6).[12]

Since *Miranda*'s only purpose is to safeguard the privilege against compelled self-incrimination by counteracting the coercive aspects of custodial interrogation, a waiver should be deemed voluntary within the meaning of *Miranda* when it does not result from the government coercion that the self-incrimination privilege is designed to prevent. Plainly, then, a waiver should be upheld as "the product of a free and deliberate choice rather than intimidation, coercion or deception" (*Moran*, slip op. 7) so long as the suspect's decision was not affected by government "intimidation, coercion or deception"; any impact upon the suspect's choice stemming from internal

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[12] A failure to administer the *Miranda* warnings raises a presumption of government compulsion normally requiring suppression of the suspect's statements. *Oregon* v. *Elstad*, slip op. 6; *New York* v. *Quarles*, slip op. 5 n.5.

personal, moral, or psychological pressures is simply irrelevant. See *id.* at 7 (upholding voluntariness of waiver by noting that "the record is devoid of any suggestion that police resorted to physical or psychological pressure to elicit the statements"); *Oregon* v. *Elstad*, slip op. 13 ("psychological impact [upon the suspect] of voluntary disclosure of a guilty secret" does not "compromise[] the voluntariness of a subsequent informed waiver").[13]

Applying some more general standard requiring an assessment of "voluntariness" by reference to a suspect's internal motivations for responding to police questioning would "cut this Court's holding in [*Miranda*] completely loose from its own explicitly stated rationale." *Beckwith* v. *United States*, 425 U.S. 341, 345 (1976). Since *Miranda* is designed to protect a suspect against *government* coercion, the existence of unrelated sources of compulsion cannot be relevant in assessing the validity of a suspect's waiver decision. Otherwise, *Miranda* would preclude the admission into evidence of inculpatory statements that could not possibly be the product of a violation of a suspect's privilege against compelled self-incrimination because, by hypothesis, the statements would not have resulted in any way from government coercion. A waiver standard that provided a suspect with protection against a self-generated compulsion to confess thus "would ignore both *Miranda*'s mission and its only source of legitimacy." *Moran*, slip op. 11; cf. pages 18-20, *supra*.[14]

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[13] Although this Court has described the suspect's decision whether to waive his rights as "an 'act of free will'" and observed that "[o]nce warned, the suspect is free to exercise his own volition in deciding whether or not to make a statement to the authorities" (*Oregon* v. *Elstad*, slip op. 10, 12 (citation omitted)), the Court never has indicated that a suspect's self-generated compulsion to confess could disable him from effectively waiving his rights.

[14] A different standard of voluntariness might well apply where the right being waived protects the individual against internal compulsion as well as government coercion. For example, the voluntariness of a guilty plea would depend upon the absence of internal as well as government coercion.

In its recent decision in *Moran* v. *Burbine*, the Court refused to interpret *Miranda*'s procedural safeguards in a manner that could alter "the subtle balance struck in that decision" between society's interest in law enforcement and the need to protect a suspect from "constitutionally impermissible compulsion" (slip op. 12). The Court observed that the procedural requirement suggested by the defendant in that case would contribute "only incidentally, if at all" to the protection of a suspect's privilege against self-incrimination and would exact "a substantial cost [in terms of] society's legitimate and substantial interest in securing admissions of guilt" (*id.* at 13). So here, the *Miranda* waiver standard should not be construed in a manner that would impose an "additional handicap on otherwise permissible investigatory efforts" (*ibid.*) when that handicap would be completely unrelated to—and unnecessary for—the protection of a suspect's privilege against compelled self-incrimination.

The Court in *Moran* also rested its decision on the "overriding practical consideration[]" that the rule suggested by the defendant would "have the inevitable consequence of muddying *Miranda*'s otherwise relatively clear waters" (slip op. 11). The waiver standard for which we contend would permit courts to assess the validity of a *Miranda* waiver by utilizing precedents developed in applying the Due Process Clause voluntariness standard governing the admissibility of confessions. Requiring consideration of a suspect's internal motivations, on the other hand, would force courts to confront complex and uncertain issues of "free will" in order to evaluate the propriety of a *Miranda* waiver, and make it difficult for police officers to predict in advance whether a suspect's waiver would be upheld. See page 20, *supra*. For all of these reasons, the voluntariness of a suspect's decision to waive his *Miranda* rights should be assessed solely by determining whether or not the waiver decision was a product of government compulsion.

The facts in this case make clear that respondent's decision to waive his *Miranda* rights could not have been

affected by government pressure. The courts below concluded that respondent's waiver was ineffective because respondent's mental delusion compelled him to waive his rights and confess (see Pet. App. A23; Tr. 89). Respondent's decision to waive his *Miranda* rights accordingly could not have resulted from government coercion; respondent's compulsion ensured that he would waive his rights regardless of any pressure from the police officers. Of course, the trial court found that the officers did not exert any such pressure in obtaining respondent's waiver or his inculpatory statements (Tr. 84). Since there was no causal connection between government compulsion and respondent's decision to speak, the only possible conclusion is that respondent voluntarily—and therefore effectively—waived his *Miranda* rights.[15]

CONCLUSION

The judgment of the Supreme Court of Colorado should be reversed.

Respectfully submitted.

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MARCH 1986

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[15] The decision concerning the validity of a suspect's waiver may not always be as clearcut as in this case. For example, if the suspect's mental condition renders him *more* susceptible to suggestions by others (rather than less susceptible to such pressure as was the case here), the prosecution might find it more difficult to demonstrate that the waiver was not the result of government compulsion. Cf. pages 15-20, *supra*. In addition, other sorts of self-generated disabilities might affect a suspect's comprehension of both his *Miranda* rights and the consequences of the waiver decision, possibly rendering the waiver ineffective on the ground that the suspect did not have the "requisite level of comprehension" regarding his rights (see *Moran* v. *Burbine*, slip op. 7).

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